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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Revision of the Commission's Rules To)	CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	
Request for Waiver of GPS Handset)	
Penetration Rule by Verizon Wireless)	

REQUEST FOR LIMITED WAIVER

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SUMMARY

Verizon Wireless requests a limited waiver of the 95% GPS handset penetration milestone date, to allow it an additional six months to meet that milestone. In October 2001, the Commission granted Verizon Wireless limited relief from the E911 Phase II rules and imposed a specific compliance plan for Verizon Wireless' GPS-capable handset deployment. At that time, none of Verizon Wireless' 27.5 million customers owned a GPS-capable handset. Since then, Verizon Wireless has sold approximately 55 million GPS-capable handsets. Today, all 44 handset models available from Verizon Wireless are GPS-capable, and 91% of its customers have GPS-capable handsets. Verizon Wireless has met or exceeded each of the Commission's handset milestones in the *VZW Waiver Order*, has fully complied with the Commission's E911 rules, and has demonstrated its commitment to meeting the E911 deployment goals it shares with the public safety community and the Commission. Verizon Wireless expects more than 93% of its customers to use GPS-capable handsets by year end, falling just short of the 95% milestone.

While previous Commission-imposed handset milestones relied in part on the availability of handsets in the marketplace and on carrier actions, the 95% penetration milestone is uniquely challenging because it depends on actions by customers to change out their handsets. To encourage customers to do so, Verizon Wireless has introduced a wide variety of GPS-capable handsets in its product line, at all price ranges, and has subsidized and advertised these handsets. In accordance with the *VZW Waiver Order*, 100% of the digital handsets offered for new sales and activations have contained GPS chipsets since December 31, 2003. While these efforts led to rapid growth in the number of the company's subscribers that have GPS-capable handsets, that growth rate has slowed

in recent months, because an increasing proportion of customers buying new handsets are trading in GPS models, and because of decreasing churn. Customers' satisfaction with handsets they purchased in 2003 or earlier has ironically slowed GPS penetration. This trend has led Verizon Wireless to conclude that although it will come close to the 95% penetration level, it is unlikely to reach that milestone by December 31, 2005.

Verizon Wireless has met the conditions for a waiver. It has "come as close as possible" to meeting the 95% penetration milestone and has been on "a path to full compliance," through sustained efforts to promote and sell GPS handsets, and through meeting or exceeding all other FCC-set milestone dates. Verizon Wireless (1) expanded its number of handset suppliers to offer dozens of GPS models across all price ranges; (2) promoted, subsidized and discounted GPS handsets to offer customers competitive and affordable choices among those handsets; (3) created targeted marketing programs to send text messages and direct mail to customers with non-GPS handsets, and followed up with outbound telemarketing to those customers; (4) implemented a program to urge non-GPS customers to upgrade their handsets when they call customer service; (5) blocked the reactivation of non-GPS handsets on its network; (6) added detailed information on its website to inform customers about the benefits of upgrading to GPS-capable handsets; and (7) developed a web-based look-up tool for customers to confirm their handset's E-911 Phase II capability. These are diligent, good faith efforts.

Absent relief from the current deadline, Verizon Wireless would be compelled to force some of these customers to swap out their handset, even though they are satisfied with their current one, solely to meet a numeric mandate. Compelling such disruptive action would in fact disserve customers. As a 2003 NENA Report concluded:

Strict enforcement of handset-penetration mandates would likely result in the unintended consequence of forcing consumers who have not already voluntarily upgraded their handsets to surrender their legacy handsets, which would be a net disservice to public safety and policy goals, and create a potential for consumer backlash in areas where PSAPs have not deployed.

A waiver of Section 20.18(g)(1)(v) and modification of the *VZW Waiver Order* to relieve Verizon Wireless from meeting the 95% milestone by December 31, 2005, is consistent with the public interest and warranted under these circumstances. Verizon Wireless, however, seeks only a limited waiver of the rule for six months, until June 30, 2006, to meet the 95% milestone, but will continue its efforts to meet that milestone as early as possible. It also proposes to expand and to continue its quarterly reporting (now set to expire February 1, 2006), to report handset penetration each quarter until the 95% milestone is exceeded.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Revision of the Commission's Rules To)
Ensure Compatibility with Enhanced 911)
Emergency Calling Systems)

CC Docket No. 94-102

Request for Waiver of GPS Handset)
Penetration Rule by Verizon Wireless)

To: Wireless Telecommunications Bureau

REQUEST FOR LIMITED WAIVER

Verizon Wireless, pursuant to Sections 1.3 and 1.925 of the Commission's rules,¹ hereby requests a limited waiver of the 95 percent E-911 handset penetration rule, Section 20.18(g)(1)(v),² and the corresponding requirement at paragraph 37 of the *VZW Waiver Order*.³ Section 20.18(g)(1)(v) and the *VZW Waiver Order* require that Verizon Wireless achieve 95% penetration of location-capable handsets among its embedded base of subscribers by December 31, 2005. Verizon Wireless' existing penetration rate is 91% and should exceed 93% by December 31, 2005. Verizon Wireless seeks a limited waiver from the mandate to reach 95% by that date, and requests an additional six months, until June 30, 2006, to do so. It will, however, continue its efforts to meet the 95% milestone as soon as possible, and proposes to expand and continue its quarterly reporting to keep the Commission updated as to its progress.

¹ 47 C.F.R. §§ 1.3, 1.925.

² 47 C.F.R. § 20.18(g)(1)(v).

³ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Request for Waiver by Verizon Wireless, *Order*, FCC 01-299, ¶¶ 18-20 (2001) ("*VZW Waiver Order*"), *aff'd on recon. Order*, 18 FCC Rcd. 21838 (2003).

I. VERIZON WIRELESS HAS MET OR EXCEEDED EVERY E911 HANDSET MILESTONE TO DATE AND HAS MADE NUMEROUS EFFORTS TO ACHIEVE THE GPS HANDSET MILESTONE.

A. Verizon Wireless Met or Exceeded Each Interim Handset Waiver Milestone.

In granting in part Verizon Wireless' 2001 request for a waiver from the E911 handset milestones then in effect, the Commission observed that Verizon Wireless faced unique challenges in meeting a strict handset milestone schedule. The Commission pointed to Verizon Wireless' large legacy subscriber base, which would need to be converted to location-capable handsets, and found that Verizon Wireless' compliance would be particularly challenging.⁴

Nonetheless, the company met or exceeded all of the handset milestone deadlines imposed by the *VZW Waiver Order*:

- By December 31, 2001, it was required to begin selling and activating GPS-capable handsets and ensure that at least one entry-level model was available. Verizon Wireless met this requirement.
- Between July 31, 2002 and March 30, 2003, 25% of the new handsets it activated were required to be GPS-capable. In fact, 34% of the new handsets that Verizon Wireless activated during this period were GPS-capable.
- Between March 31, 2003 and December 30, 2003, 50% of the new handsets it activated were required to be GPS-capable. In fact, 78% of the handsets that Verizon Wireless activated during this period were GPS-capable.
- By December 31, 2003, 100% of all new handsets activated were required to be GPS capable. Verizon Wireless met this deadline.

Verizon Wireless also met each non-handset-related milestone the Commission imposed on it. For example, the *VZW Waiver Order* required that:

⁴ *VZW Waiver Order* at ¶ 20.

- On or before April 1, 2002, Verizon Wireless must complete deployment of the network-assisted portion of AGPS/AFLT in its switches and cell sites for Lucent markets. *VZW met this milestone.*
- On or before August 1, 2002, Verizon Wireless must complete deployment of the network-assisted portion of AGPS/AFLT in its switches and cell sites for Nortel markets. *VZW met this milestone.*
- On or before March 1, 2003, Verizon Wireless must complete deployment of the network-assisted portion of AGPS/AFLT in its switches and cell sites for Motorola markets. *VZW met this milestone.*
- In areas where Verizon Wireless receives a valid PSAP request where more than 50% of the PSAP's coverage area is covered by the Verizon Wireless analog-only network, Verizon must comply with the Commission's Phase II rules by using a network-based solution or by upgrading to a digital network with a Phase II compliant solution in those areas. *VZW met this milestone.*
- On or before December 31, 2002, Verizon Wireless must complete all valid PSAP requests received on or before June 30, 2002, except in markets served by Motorola switches. In Motorola markets, on or before March 31, 2003, Verizon Wireless must complete all valid PSAP requests received on or before September 30, 2002. In markets served by Lucent and Nortel switches, Verizon Wireless must complete valid PSAP requests received on or after July 1, 2002 within six months of the request, as provided in the Commission's rules. In markets served by Motorola switches, Verizon Wireless must complete valid PSAP requests received on or after October 1, 2002 within six months of the request, as provided in the Commission's rules. *VZW met this milestone.*

Verizon Wireless also delivered on its offer, which the Commission included as a requirement in the *VZW Waiver Order*, to deploy Enhanced Forward Link Trilateration ("EFLT") in the Lucent and Nortel switched portions of its network. EFLT technology provides a capability for improved location estimates that are more specific than Phase I but not as specific as Phase II. EFLT also transmits location information regardless of whether a subscriber is using a GPS-capable handset. This additional effort – unique to Verizon Wireless – further underscores the company's ongoing commitment to meeting the Commission's E-911 public safety objectives.

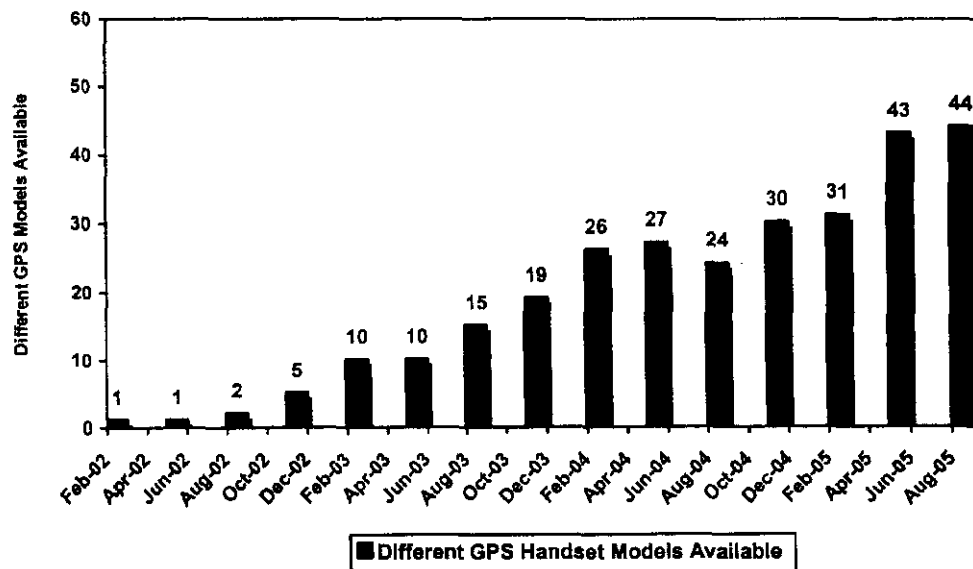
B. Verizon Wireless Has Taken Multiple Actions to Encourage Customers to Replace Non-GPS Handsets.

Since offering its first GPS-compliant handset in late 2001, Verizon Wireless has sold more than 55 million GPS handsets, many of which are replacements for customers' first GPS handsets. Today, more than 91% of its customers possess a GPS-capable handset. The company has achieved this substantial penetration of its embedded base of customers by constantly promoting new handsets and their features. Where meeting a milestone depended upon its vendors or other factors beyond its direct control, Verizon Wireless worked to ensure that it would meet the conditions of its waiver. This commitment will continue and Verizon Wireless will not scale back its efforts.

Offering Dozens of GPS Handsets Across All Price Ranges. Verizon Wireless introduced its first GPS-capable handset in December 2001 and has continued to bring dozens of new models to market, without compromising its rigorous standards for equipment quality.⁵ Early on, Verizon Wireless incorporated GPS capability into the product specifications for its existing handset vendors to ensure that new handsets had such capability. Moreover, the company discontinued and replaced older, non-GPS models with new GPS models as they became commercially available. Verizon Wireless also initiated commercial relationships with new handset vendors to increase the potential sources for new GPS-capable handsets. To expedite penetration of GPS handsets, the company made all GPS models immediately available nationwide through its online store and retail outlets, irrespective of whether the PSAPs serving the customers' areas had made the necessary Phase II upgrades.

⁵ February 1, 2002 VZW E911 Quarterly Report at 1. The Samsung SCH-N300 was the first GPS-capable handset choice Verizon Wireless offered. It thereafter steadily expanded the variety and number of GPS-capable handset; today over 40 GPS models are available. See Appendix A to this Request, which lists the GPS handset models that have been available to customers each quarter, as reported to the FCC in its quarterly reports.

Verizon Wireless worked with its handset vendors to introduce innovative GPS models in sufficient quantities to encourage early acceptance by its customer base, as demonstrated by success in exceeding the Commission's interim 25% and 50% handset sales and activations milestones. The following chart demonstrates the results of Verizon Wireless' efforts to make multiple new models of GPS-capable handsets available to its customers.



The wide range of GPS models helped enable the company to exceed the new handset activation milestones it was required to meet throughout 2002 and 2003. Between mid-2002 and the end of 2003, the "take rate" of GPS vs. non-GPS handsets accelerated from 40% to 100% of all handset activations, placing literally millions of GPS units in customers' hands. By December 31, 2003, in compliance with the *VZW Waiver Order*, Verizon Wireless had completely converted its product line to contain exclusively GPS-capable handsets. Verizon Wireless currently carries 44 different GPS-capable handsets from eight different handset manufacturers. GPS capability is now a well-established standard feature in all handsets that the company sells.

Verizon Wireless has offered the variety of phones described above at all price points, from lower-end phones to more expensive models, notwithstanding the costs associated with subsidizing handsets with GPS chipsets. The company has required its customers to purchase new phones in order to take advantage of new features, plans, and capabilities. Many of the handsets that Verizon Wireless offers incorporate other features that not only attract new customers but also encourage existing subscribers to upgrade their handsets to GPS-capable models. For example, almost all of the phones with color screens or that are enhanced for instant messaging, email, mobile office applications and games contain GPS chipsets. Every phone capable of accessing Verizon Wireless' broadband VCAST mobile entertainment or containing video or the popular camera phone capability requires the purchase of a GPS handset and non-GPS models cannot be upgraded to have these features.

Promoting GPS Handsets Through Discounts and Free Upgrade Programs.

Verizon Wireless has conducted aggressive and effective promotions of both its service and its products through advertising, other marketing, and customer incentives. During the period since Verizon Wireless first offered GPS-capable handsets, the company has advertised extensively to the public via mass-market television ads, radio ads, print media, direct mailings, and bill messages and inserts. Beyond generic ads that promote the service, network reliability and the brand, Verizon Wireless has specifically promoted and subsidized its handsets. It encouraged migration to GPS handsets through numerous campaigns aimed at existing customers, reaching them through monthly bill inserts, mailings, customer care, and advertising. For example, Verizon Wireless' "New Every Two" program gives customers a free new phone or credit (with a value up to \$100) every

two years to encourage them to upgrade their handsets regularly.⁶ Verizon Wireless often includes a rebate offer which, when combined with the New Every Two program, deeply discounts the phones, enabling customers to obtain some models for free. For example, there are nineteen handsets currently available⁷ on Verizon Wireless' website that are priced at less than \$100 – and two models are “Buy One Get up to Four Free”. Customers could get any of these nineteen models at no charge under the \$100 credit available through the New Every Two program.

Equipment promotions and offers have promoted a “Buy One Get One” FREE option consistently for the last two years and have been part of the marketing plans to give our existing customers an incentive to upgrade to a GPS handset. Verizon Wireless has promoted “Buy One Get Up to Four” FREE offers and other incentives including regular offers of rebates and discounts on upgraded phones, which vary among different suppliers' products and features to encourage handset turnover. These promotions have permitted customers to upgrade their handsets at little or no cost.

Targeted Marketing Through Mail, Text Messages and Calls to Customers. In addition, Verizon Wireless periodically contacted existing customers through promotional direct mail and follow-up phone calls to encourage them to upgrade their handset to a new one at a promotional price. These offers were sent to customers prior to the end of their contract and regularly after that as they continued to receive service without an annual service agreement. Recognizing that customers nearing the end of their contract term or already out of contract are likely to have older equipment, some of which may be non-GPS

⁶ To qualify for the New Every Two program customers need to be in good standing on a two year contract priced \$34.95 or higher for the full term. They could then receive a credit of up to \$100.00 off the 2-year consumer retail contract price of a new digital handset when signing a new 2-year agreement.

⁷ See <http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewPhoneOverview>.

phones, Verizon Wireless initiated contacts to these customers on multiple occasions. *Direct mail offers to upgrade their equipment were made up to four times a year to customers who were approaching the end of their contract or within the first two years of a month-to-month relationship. Thereafter direct mail offers were mailed twice a year. These efforts have helped progress toward the GPS penetration milestone.*

In addition to the phone upgrade promotions made to all customers, Verizon Wireless also has conducted marketing efforts specifically targeting those customers who continued to use non-GPS handsets. Verizon Wireless created various programs to send text messages to non-GPS handsets, sent direct mail promotions to non-GPS customers, and followed up with outbound telemarketing calls to those customers with non-GPS handsets. The notices urged customers to call or visit a Verizon Wireless store for details of new phone offers. Telesales followed up with calls to customers who had previously been sent messages urging them to take advantage of new phone upgrade offers. The text messaging campaigns began in June, sending as much as 45,000 text messages daily to more than one million customers (excluding those on the do not call/email/contact list). Millions of solicitations were made to non-GPS customers since June. Despite being contacted numerous different times, few of those targeted customers with non-GPS handsets chose to upgrade. One campaign sent out almost 400,000 text messages, received 6,500 responses and resulted in 200 upgrades, indicating customer resistance to change out phones they are satisfied with.

Flagging Non-GPS Customer Who Call Customer Service. Verizon Wireless also modified its IT and Customer Service systems to alert its customer service representatives when the incoming call was from a customer with a non-GPS handset. This modification required the company to spend significant IT resources on building a complex new lookup

tool that "flagged" those customers owning handset models that were non-GPS. While attending to the customer's inquiry, representatives were able to advise those customers:

"Please be aware that your current phone is not E911 capable, which means it cannot provide information about your location in the event of an emergency. ALL the wireless phones that Verizon Wireless sells today have the ability to provide information about your location, should an emergency arise. Can we interest you in a new phone today?"

During a three-month period approximately 2,200 of 9,000 incoming callers in the company's northeast area upgraded their handsets after hearing about E911 capability from the Customer Service representatives.

Blocking Activation of Old Non-GPS Handsets. Verizon Wireless implemented other actions to expedite increased GPS handset penetration of its embedded base. The Commission's E911 handset sales milestones required that 100% of all new handsets sold and activated by Verizon Wireless be GPS-capable after December 31, 2002, but did not impact non-GPS handsets already in the marketplace. Customers continued to reactivate old non-GPS handsets they had previously purchased. When it became apparent that the 95% milestone might not be reached by the end of 2005, Verizon Wireless tightened its re/activation policy to only allow customers to reactivate GPS-capable equipment on Verizon Wireless' network (no older non GPS capable equipment would be allowed to be re/activated). Verizon Wireless thus stopped activating or making electronic serial number changes for non-GPS equipment. Verizon Wireless took this action when it became apparent that some customers would continue to activate/reactive non-GPS equipment even though newer handsets were readily available.

Providing Web Site Information on E-911 and GPS Handsets. In addition, Verizon Wireless created several pages on its web site dedicated to communicating the importance of having GPS-capable handsets and its policies on restricting re/activations to

GPS-capable handsets only. One web page, entitled "Answers to Frequently Asked Questions - E911 Compliance," explains how E911 works, the importance of having GPS-capable phones, and what consumers can do if their handsets are not GPS-capable.⁸

Installing Web Site GPS Capability Look-Up Tool. In order to improve customer awareness and further encourage handset upgrades, Verizon Wireless recently developed and implemented a handset-based look-up tool for its website that allows customers to check their handset's GPS-capability.⁹ The look-up tool can confirm whether the phone model selected is GPS-capable or whether the consumer should consider an upgrade. Besides being able to confirm their handset status Verizon Wireless further encourages customers to contact their local or state elected officials to find out if the PSAP serving their town/city has updated its systems to use the wireless Enhanced 911 information or if not when wireless E911 service will be available in their area.

Verizon Wireless' marketing and promotional efforts are expressly targeted toward encouraging handset turnover and have yielded substantial progress toward the 95% penetration milestone. As of September 30, its penetration stands at 91%. To date E911 Phase II capability has not been a major point of interest for Verizon Wireless' customers, possibly due in part to the unpredictability of the underlying PSAP's capability in the customer's area. Verizon Wireless anticipates that when more PSAPs upgrade their systems to be able to use Phase II E911 service and as the Commission, Public Safety, carriers and the media make the public generally more aware of E911 features, customers may wish to confirm for themselves whether their handsets are GPS-capable. The FCC

⁸ Verizon Wireless' webpage can be found at the following link:
http://www.verizonwireless.com/b2c/dispatcher?action=DISPLAY&item=FAQ_TOPIC&topicID=278. A copy is also attached as Appendix B to this request.

⁹ Verizon Wireless' webpage can be found at the following link:
<http://www.vzwshop.com/e911/>. A copy is also attached as Appendix C to this request.

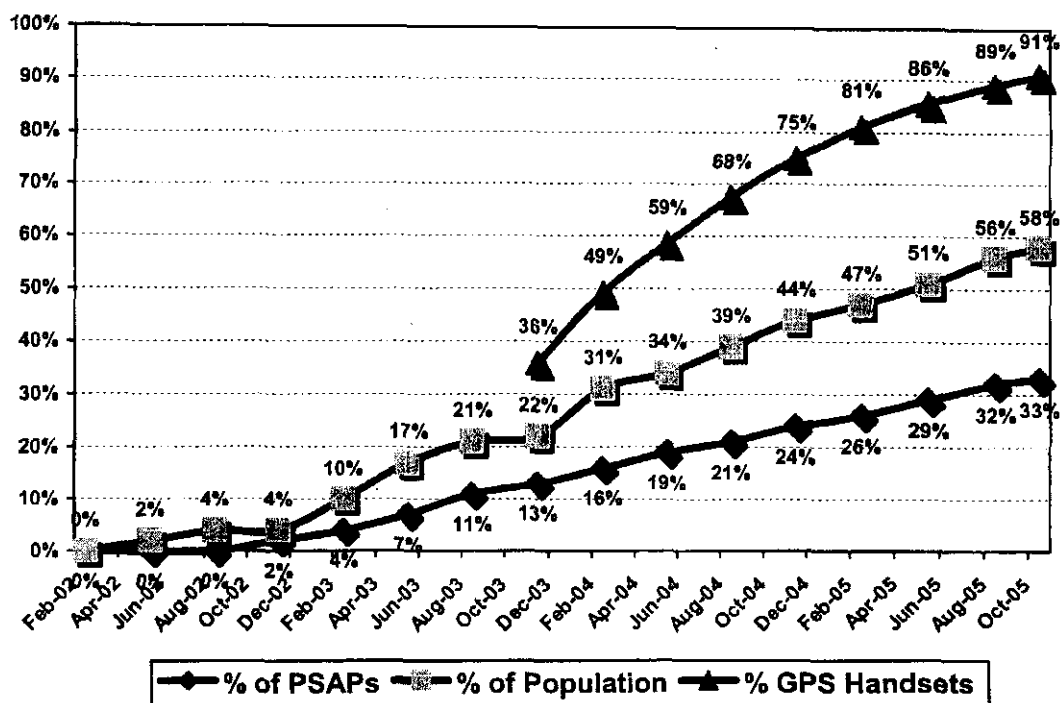
has itself acknowledged that it has a role in educating customers about GPS-capable handsets. Its Consumer and Governmental Affairs Bureau issued a consumer advisory urging consumers to “*find out whether your phone has E911 location capabilities.*”¹⁰

C. Verizon Wireless’ GPS Handset Penetration Has Outpaced PSAP Phase II Readiness.

Verizon Wireless has been deploying its handset-based Phase II E911 solution since early 2002 and is a leader in PSAP deployments. As of September 30, 2005, Verizon Wireless had deployed E911 Phase II service to 2,057 PSAPs, out of a total of 6,200 PSAPs nationwide. Due to financing and other problems, only about one third of the nation’s PSAPs have deployed Phase II service. On a population basis, slightly more than 50% of Verizon Wireless’ customers are located in communities where the PSAPs have installed Phase II capability. While some states have seen extensive PSAP deployment, others have seen as little as 20% of their PSAPs become Phase II capable; some states continue to have no Phase II systems at all. The proportion of Verizon Wireless’ customers who have phones capable of delivering Phase II location information has rapidly eclipsed the proportion of customers who can benefit from that phone because their PSAPs have deployed Phase II capability. The following graph compares Verizon Wireless’ handset penetration to PSAPs’ deployment of Verizon Wireless’ Phase II E911 service,

¹⁰ See FCC Consumer Advisory “What You Need to Know About calling 911 From Your Wireless Phone” <http://www.fcc.gov/cgb/consumerfacts/e911.html>. At a meeting with the Consumer and Governmental Affairs Bureau on August 17, 2005, to apprise the Bureau of the company’s progress toward meeting the handset milestone, Verizon Wireless and the Bureau discussed additional consumer advisories or other actions the Bureau could take to educate customers about the Commission’s mandate and the benefits of GPS-capable handsets.

both in terms of percentage of PSAPs and population covered:



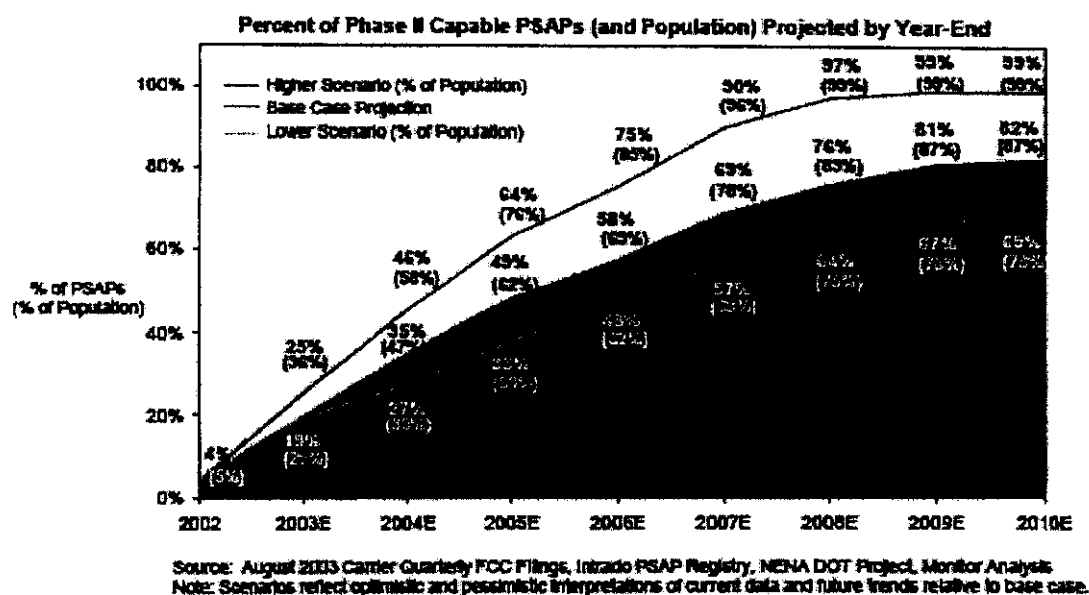
In 2003, a National Emergency Number Association (“NENA”)-commissioned report predicted that by year-end 2005, less than 50% of the nation’s PSAPs would be Phase II capable.¹¹ Specifically, the report predicted that between 38% (“pessimistic”) and 64% (“optimistic”) of PSAPs would have Phase II capability by the time of the 95%

¹¹ Monitor Group Report, “Analysis of the E9-1-1 Challenge,” December 2003, at 36, 45. The October 2002 FCC-commissioned report of Professor Dale Hatfield confirmed that PSAP readiness has long been an understood impediment to E-911 availability:

[U]nless corrective steps are taken, the rollout of wireless E911 services will continue to be constrained by what I refer to in shorthand as PSAP fatigue, the lack of cost recovery and other funding mechanisms, and the lack of an advocate within the Federal government. I also conclude that, even when good faith efforts are made on all sides, PSAP readiness remains a potential detriment to the rapid and efficient rollout of wireless E911 services.

See Dale N. Hatfield, A Report on Technical and Operational issues Impacting The Provision of Wireless Enhanced 911 Services, Prepared for the Federal Communications Commission, § 3.4.2. WT Docket No. 02-46, filed Oct. 15, 2002, at 31.

handset penetration deadline. Verizon Wireless' experience reflects that PSAPs are deploying Phase II capability more slowly than the NENA report's projections:



The fact that most communities do not yet have Phase II service precludes the company from expressly touting E911 Phase II location capability as a means of achieving the 95% penetration milestone.¹² Given the limited degree of Phase II deployment in many states that the Hatfield report documented, and that continues, an explicit E911-based campaign to promote GPS-capable handset sales would not serve the public interest, but would only confuse and mislead customers. Due to disparate PSAP capabilities, no carrier can represent that E911 will be available to its subscribers throughout its footprint, or even in their home market. Customers cannot assume that when they make an emergency call

¹² See *Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Request for a Limited and Temporary Rule Waiver by Sprint Corporation*, Order, 18 FCC Rcd 12543, ¶ 13 n.52 (2003). The Commission noted, not disapprovingly, that while "Sprint ... is currently not advertising the GPS-capabilities of these handsets because it is concerned that such advertising might lead to inaccurate customer expectations about location-capability" it "has offset this handicap by offering GPS-enabled phones with other new features that help to make them attractive to consumers, notably the inclusion of '3G' functionality."

on a GPS handset, the PSAP will be able to use any location information it was sent, let alone the more precise data that GPS capability can provide. Many PSAPs still have only Phase I capability – or no location capability at all.¹³ Even if a customer's billing address is located in a community where the PSAP has installed Phase II capability, this by no means assures that customers will benefit from the GPS capability of their handsets, because customers use their devices not only at that address (which may not even be their home) but also while traveling and commuting or at work.

The Commission has acknowledged that carriers cannot be expected to tailor their GPS penetration efforts to particular areas, given the widely varying status of Phase II deployment by PSAPs.¹⁴ In repealing the original rule that the handset milestones apply only in areas where there was a PSAP Phase II request, the FCC stated:

[W]e concur with Sprint's contention that the more accelerated handset deployment schedule following a PSAP request appears to be at least difficult, if not impossible, to implement. As it stands, this rule would require carrier to continuously monitor the status of PSAP requests for Phase II compliance throughout the country, which may occur on widely varying schedules. In addition, carriers would need to find some mechanism to correlate a customer's location with the Phase II status of the corresponding areas. Carriers would also have to ensure that all of their sales and distribution channels have current information and follow similar procedures in distributing ALI-capable handsets. Such efforts are likely to be difficult, time consuming, and expensive without any corresponding public benefit.

¹³ There are approximately 6,200 PSAPs in the U.S. See National Emergency Number Association webpage "9-1-1 Fast Facts" http://nena.org/911_facts/911fastfacts.htm. No carrier has received remotely near 6,200 PSAP requests for E911 Phase II, and therefore has not deployed anywhere near that number of E911 Phase II systems. Verizon Wireless has received Phase II requests from only about 2,500 PSAPs within its licensed area since 2002.

¹⁴ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442, ¶ 31 (2000) ("*E911 Fourth MO&O*").

II. DESPITE VERIZON WIRELESS' EFFORTS, SOME LEGACY CUSTOMERS ARE NOT REPLACING THEIR NON-GPS HANDSETS.

A. The FCC Has Previously Adjusted Milestones in Response to Actual Experience in E-911 Deployment.

The Commission has consistently sought to balance the public interest in an aggressive E911 roll-out, including GPS-capable handsets, with a recognition that the handset market is inextricably tied to customer choice and the pace of actual Phase II deployments with PSAPs.¹⁵ Handset penetration milestones have relied in significant part on market forces to achieve the Commission's objectives and on carriers to advise it when milestones should be adjusted.¹⁶ As the market has evolved, the Commission has adjusted its requirements accordingly. In the *E911 Third R&O* adopting the initial rules governing handset-based solutions, the Commission set what it described as an "aggressive schedule for carriers" choosing to deploy a handset-based solution.¹⁷ The Commission concluded that normal market forces might generate almost complete penetration within three years or less, leaving carriers to do little more than comply with interim handset deadlines.

Nevertheless, it noted:

[S]uch predictions are not guarantees. For any of several reasons, (e.g., a recession, declining growth rates, or early deployment of non-ALI-capable handset deployment digital phones that customers elect not to replace), the actual pace of ALI-capable handset deployment could lag and may take several years. Some customers will undoubtedly elect to economize by keeping their handsets for much longer than average, despite the advantages of ALI-capable handsets.¹⁸

In the *E911 Fourth MO&O*, the Commission extended the handset deployment schedule by one year and changed it from requiring carriers to make "reasonable efforts" to

¹⁵ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd. 17388, ¶¶ 51-53, (1999) ("*E911 Third R&O*").

¹⁶ See, e.g., *VZW Waiver Order*, ¶ 31.

¹⁷ *E911 Third R&O*, ¶ 53.

¹⁸ *E911 Third R&O*, ¶ 51.

reach 100%, to a flat 95% requirement.¹⁹ The Commission found that “the current schedule may have been overly ambitious, in view of consumers that may wish to continue to use their non-ALI capable handsets, even if newer handsets provide location as well as other advanced features.”²⁰

When the interim handset activation deadlines adopted in the *E911 Fourth MO&O* also proved unattainable, Verizon Wireless, and many other carriers, sought and were granted individualized waivers with new handset milestones.²¹ Verizon Wireless did not seek revision of the 95% handset penetration deadline at that time because such a request would have been premature and, in any event, the company fully intended to meet all of its obligations under the 2001 *VZW Waiver Order*.²² It has carefully monitored handset penetration data since GPS phones became available, and until recently the data indicated that the 95% milestone was achievable by December 31, 2005. However, the newest penetration data indicate that, despite Verizon Wireless’ efforts to encourage upgrades and conversions to GPS devices, it is unlikely that 95% of its customers will have made this choice by year’s end. Actual consumer attitudes once again warrant a modest adjustment in the penetration milestone deadline here.

¹⁹ See *E911 Fourth MO&O*, ¶43-44. The Commission declined, however, to fully heed the recommendations of several major handset vendors that even more time was needed. *Id.*, ¶¶ 13, 25-37.

²⁰ See *id.* ¶ 36.

²¹ Updated Phase II E911 Report and Request for Limited Waiver, by Verizon Wireless, dated July 25, 2001, CC Docket No. 94-102 (“VZW Waiver Request”); See also, *VZW Waiver Order*. The FCC acknowledged that Verizon Wireless’ revised compliance schedules for handset activation were the result of its efforts to identify realistic dates and represent a clear path to full Phase II compliance. *VZW Waiver Order*, ¶26.

²² The Commission has discouraged carriers from seeking premature, non-particularized relief from the E911 rules. See, e.g., *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rd 14841, ¶ 41 (2002).

B. Despite Verizon Wireless' Efforts, Some Legacy Customers Are Not Upgrading Their Non-GPS Handsets.

Today, approximately 9% of Verizon Wireless' customers have elected not to replace their handsets. That number is expected to continue to decline to around 6% by year-end. A small, slowly dwindling but persistent segment of Verizon Wireless' subscriber base has, to date, declined to replace their existing handsets. The promotions, targeted marketing and attractiveness of new products over the last four years have not enticed these legacy customers to convert to GPS-capable handsets.²³

Even after two and a half years of selling only GPS handsets, it is clear that the services, features and pricing plans that motivate new subscribers to subscribe to Verizon Wireless, either through normal growth patterns or LNP-related churn, may not motivate some existing subscribers to upgrade to new phones. Moreover, this segment appears to be in excess of the 5% figure the Commission anticipated, at least for a period beyond the December 31, 2005 deadline. Given Verizon Wireless' efforts to encourage upgrades, it would be unprecedented and ill-advised for the Commission to demand strict compliance that would compel the company to force customers to swap out their handsets. This compels a second look at the 95% milestone as it applies to Verizon Wireless.

Verizon Wireless has also heard directly from many customers that they do not want to, or cannot, change to GPS handsets. Federal, State and Local government agencies, utilities, as well as customers involved in transportation, living in rural areas, and with special applications or technical requirements, have resisted changing their units. Many of the customers were using traditional non-GPS handsets in special applications that could not be modified to use GPS-capable equipment: Government accounts are using

²³ As was discussed above, the FCC expected that some core of legacy users would not adopt GPS-capable handsets by the established deadline, or ever. See *E911 Third R&O*, ¶ 51.

specially-equipped handsets; utilities are using handsets for wireless meter-reading; handsets are being used in highway roadside emergency call boxes; older non-GPS capable handsets are being used in specially designed factory-installed integrated automobile hands-free applications; and handsets with 3-watt booster capability are being used in rural areas like the National Parks and in Gulf Coast oil production and by consumers in rural areas. Verizon Wireless received requests from many customers to continue to use their non-GPS capable handsets, including the following:

- White House Office of Communications
- Federal Aviation Administration
- Federal Bureau of Investigation
- Los Angeles Unified School District
- New York State Department of Transportation
- New York State Police
- Northern CA Metropolitan Transportation Commission
- St. Louis Police Department
- Town of Canton, NC
- U.S. Department of Energy – Bonneville Power Administration
- U.S. Department of Homeland Security - FEMA
- U.S. Department of Alcohol, Tobacco and Firearms

- American Steamship Company
- Canac Remote Control Technologies
- CSX Technology
- Cumulus Broadcasting
- Dynaletric Company
- Duquesne Light
- King Television
- Nielsen Media Research
- Tennessee Valley Authority
- Progress Energy
- Univeristy of Pennsylvania Police Department

State Public Utility Commissions also heard from customers who were unwilling or unable to upgrade their handsets,²⁴ and they prompted the National Association of Regulatory Utility Commissioners to pass a resolution at their Summer 2005 meeting²⁵ urging the Commission “to carefully consider the Joint Petition filed by the RCA and the CTIA and to suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets until the 2008 termination of the requirement to provide analog services.”

Verizon Wireless has managed to accommodate these customers, but is clear that there remains a significant base of consumers who choose not or cannot upgrade to GPS-capable handsets despite Verizon Wireless’ efforts or the benefits of E911 capability.

C. Verizon Wireless’ Growth Rate in GPS Handset Penetration Has Recently Slowed.

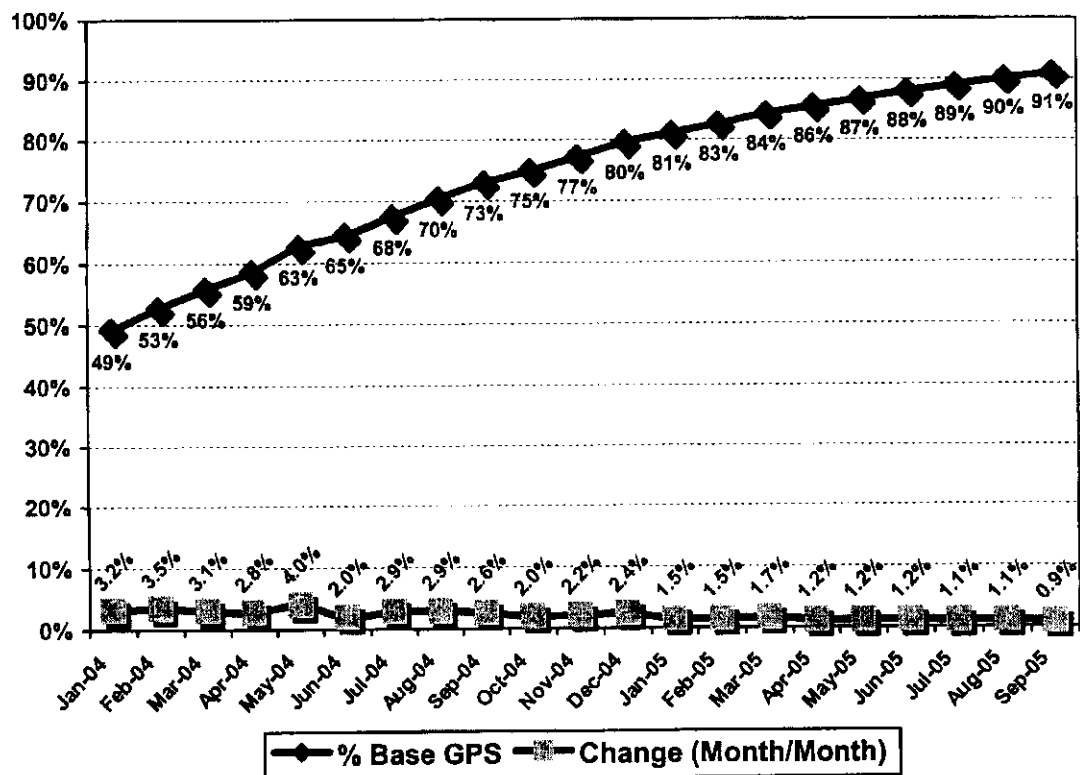
As described previously, Verizon Wireless met or exceeded all of the Commission-mandated milestones to date for new handset sales. The initial growth in GPS-capable handset penetration was rapid and, as required by the Commission, since December 31, 2003 all new Verizon Wireless handsets sold have been location-capable. As a result, Verizon Wireless has sold a staggering number of GPS-capable handsets. An estimated 55 million GPS capable phones have been purchased by new Verizon Wireless customers or upgraded by existing customers since 2001, and many of those initial GPS units have since been upgraded and replaced with newer GPS units. The GPS adoption growth rate has,

²⁴ “Clark Pressing FCC to Reconsider Rural Cellular Rules”

http://www.ndgop.org/gop_news/news_detail.asp?ID=742; “Residents fight to keep analog cell phones” <http://www.msnbc.msn.com/id/8709730/>

²⁵ “Resolution Regarding the Suspension or Waiver of the December 31, 2005 Deadline for 95 Percent Penetration of Location-Capable Handsets”, Sponsored by the Telecommunications Committee and Consumer Affairs Committee and Adopted by the NARUC Board of Directors July 27, 2005.

however, slowed in recent months. As the Commission has acknowledged, various factors could hamper a carrier's ability to promote GPS handset deployment, causing the actual pace of deployment to lag.²⁶ Verizon Wireless' experience bears this out. The availability of a large product line, advanced phone features, and extensive promotions of new plans resulted in monthly increases of overall GPS penetration by approximately 4.0-2.0% each month during 2004. By early 2005, as shown in the following graph, the penetration rate of GPS-capable handsets was 83%, and there was no basis to conclude that the 95% level was not achievable by year-end.



Recently, however, Verizon Wireless has observed a consistent slowing of the monthly increase in total GPS penetration. For the first half of this year, as the above

²⁶ E911 Third R&O, ¶ 51.